



Agricultural Marketing Service

7 CFR Part 180

[Doc. No. AMS-LP-22-0065]

RIN 0581-AE22

Cattle Contracts Library Pilot Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes the Cattle Contracts Library pilot program. Under this pilot program, the Agricultural Marketing Service will collect, maintain, and report aggregated information on contracts between packers and cattle producers for the purchase of fed cattle. The library will include different types of contracts and contract terms, including contract terms on any schedules of premiums or discounts, delivery and transportation, terms and payments, financing, risk-sharing or profit sharing, and other financial arrangements. In addition to contract term information, the Agricultural Marketing Service will also report on the number of head of cattle purchased under these contracts.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: The Agricultural Marketing Service (AMS) is establishing a Cattle Contracts Library pilot program (Pilot) to increase market transparency for cattle producers pursuant to sec. 779 of the Consolidated Appropriations Act, 2022 (Pub. L. 117-103, March 15, 2022) (the Act). The Act directs AMS to establish

a Cattle Contracts Library pilot that is similar to, as determined by the Secretary, the U.S. Department of Agriculture's (USDA) Swine Contract Library maintained pursuant to sec. 222 of the Packers and Stockyards Act (7 U.S.C. 198a).

Cattle Contract Library Pilot Program

Under the Pilot, packers are required to provide AMS with contract information for the purchase of cattle and the number of actual and estimated cattle purchased under active contracts within particular timeframes. To protect confidential business information, AMS will only collect contract terms without any personally identifiable information, not entire contracts. The contract clauses required to be submitted include contract method, contract start and end dates, base price source and adjustment, selling basis, premiums and discounts, specifications relating to cattle attributes, delivery and transportation terms and payments, financing, risk-sharing, profit-sharing or other financial arrangements, and volume provisions. Monthly, packers are required to submit the number of actual cattle purchased under active contracts in the prior month and the estimated maximum number of cattle to be purchased under active contracts for slaughter in the current calendar month.

On [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], packers must submit the required contractual clauses for each active contract, whether the contract is oral or written. After the initial submission of information, packers will be required to submit the same information for each new active contract made available to a producer or producers as well as any changes to the terms of a previously submitted active contract and associated schedules or appendices within one business day of the contract being available. Because the packers prepare these contracts in advance of their offering those contracts to producers, AMS determined these submission timeframes to be reasonable.

Scope of Cattle Contract Library Pilot Program

Not all packers are required to submit this information. Generally, only packers that slaughtered an average of not less than 5 percent of the number of fed cattle slaughtered nationally during the immediately preceding five calendar years are subject to this Pilot. To determine the definition of packer for purposes of the Pilot, and thus the packers subject to the required reporting under the Pilot, AMS considered two approaches: (1) the Livestock Mandatory Reporting Act (LMR), also administered by AMS, covers packing plants that slaughtered an average of 125,000 head of cattle per year during the immediately preceding 5 calendar years, and (2) the proposed Congressional legislation, S. 4030 - Cattle Price Discovery and Transparency Act of 2022, covers packing companies that have slaughtered during the immediately preceding five calendar years an average of not less than 5 percent of the number of fed cattle slaughtered nationally during the immediately preceding five calendar years.¹ AMS estimates that, under the LMR approach, approximately 40 packing plants operated by 16 packing companies would be subject to the Pilot. AMS estimates that under the S.4030 approach, approximately 18 packing plants operated by four packing companies would be subject to the Pilot.

AMS estimates that the LMR approach would cover approximately 90 percent of all fed cattle slaughter. AMS estimates the S. 4030 approach would cover 85 percent of total fed cattle slaughter.² When estimating the costs to all reporting entities, AMS estimated the total annual cost under the LMR approach to be \$294,947, and the total annual cost under the S.4030 approach to be \$122,752. Therefore, AMS estimates that requiring only packers slaughtering not less than 5 percent of the number of fed cattle slaughtered nationally annually to submit information results in a 42 percent reduction in

¹ A “packing plant” refers to a physical plant. A “packing company” refers to an entire company. A packing company may have multiple packing plants.

² As estimated in the AMS Packers and Stockyards Division Annual Report 2020; <https://www.ams.usda.gov/sites/default/files/media/PackersandStockyardsAnnualReport2020.pdf>.

cost burden to the industry while providing a library of contractual information covering 85 percent of the annual total fed cattle slaughter. For the purposes of this Pilot, AMS believes this is a sufficiently similar market capture to the Swine Contract Library, which covers roughly 95 percent of the market, and would capture all types of applicable contracts.

Required Reporting

AMS worked with packers to voluntarily obtain contractual information used for the purchase of cattle and associated volume information to develop the Pilot. While this voluntarily submitted information was sufficient to design the Pilot, it did not provide AMS with comprehensive information on all the types of contracts used to purchase cattle or the volume of cattle purchased. Based on feedback from industry stakeholders, including those who voluntarily submitted contract information, AMS determined the Pilot needed to be mandatory; otherwise, the Cattle Contract Library would be incomplete, and the information would be potentially misleading if packers self-select the contract terms they provide.

Consistent with the statutory authority for the Pilot, submission of the specified contractual information and volume information for those contracts is mandatory, as it is with the Swine Contract Library.

Public Input

While by statute this Pilot is exempt from notice and comment rulemaking and the Paperwork Reduction Act, AMS has considered public input. AMS announced an in-person listening session on April 11, 2022, in a notice to trade on their website, and AMS provided an opportunity for written comments to be submitted via e-mail. On April 21, 2022, AMS hosted a cattle industry listening session on the Pilot in Kansas City, MO. The session was attended in-person and virtually by over 150 industry stakeholders and provided an open forum for the public to share their feedback. AMS specifically sought

feedback on what information the Pilot should include to be most helpful to cattle marketers, what concerns stakeholders have over the public release of the Pilot, and what format should be used to present the information. AMS also provided an opportunity for interested parties to submit written feedback in the week following the listening session and posted all written feedback on its website. All public input related to the Pilot can be found here: <https://www.ams.usda.gov/market-news/livestock-poultry-grain/cattle-contracts-library>.

The most frequent input AMS received was that the Pilot should provide factual, reliable information in a user-friendly format that protects all confidential or sensitive business information. AMS also received input that the packers' submission costs should be minimized and should provide educational outreach to stakeholders.

AMS considered these comments in the preparation of this rule. To maintain confidentiality, the Pilot requires submission of contract clauses, not entire contracts. Further, while this rule does not address the way in which AMS will report the information collected through the Pilot, AMS intends to publish the Cattle Contract Library in a manner that does not disclose the source's identity to further protect the buyers' and the sellers' confidential business information.

This Pilot will allow AMS to make a range of valuable market information on the structure and volume of cattle contracts publicly available, while maintaining the confidentiality of individual contracts and sensitive information included therein. The law establishing the Swine Contract Library adopted sec. 251 of the Agricultural Marketing Act of 1946 to protect personal identifying information and proprietary business information from public disclosure. The Pilot likewise adopts those provisions in this rule to prohibit disclosure beyond contract and volume information.

With respect to input on cost, AMS determined that the selected approach would impose the lower cost burden on the industry, yet still provide a library of contractual

information that covers most contracts for fed-cattle. AMS believes this Pilot covers a similarly sized percentage of sales in the market as the Swine Contract Library covers in the market for swine.

In response to input requesting that AMS provide outreach, during development of the Pilot, AMS conducted nearly 40 outreach and educational events with industry stakeholders during which the Pilot was demonstrated and additional feedback for possible refinements was gathered. AMS designed the Pilot in a user-friendly and intuitive manner, accessible to users with minimal guidance. During the outreach sessions, many stakeholders expressed their appreciation for the ease with which they could access and understand the information in the Pilot.

In addition to the feedback received through the listening sessions and outreach, packers voluntarily provided AMS with over 300 inactive contracts and 100 active contracts for review, which informed AMS's determination as to the contract clauses required to be reported. AMS also reviewed other contracts available under its marketing and regulatory programs. Using these contracts, AMS identified common elements in each that affect the final pricing. This included the base price mechanism, base price adjustments, premiums and discounts, and other miscellaneous provisions (e.g., transportation, shrink, selling basis, dressing percent conversion, etc.). AMS also examined important differences in the contracts, including the influence of any short- or long-term buyer/seller relationships on financial terms of the contract that may affect the competitive environment of the packers and producers in the cattle market. AMS used this feedback and contract information to develop a draft library that was shared with interested stakeholders including packers, industry groups, Congressional staff, and academics. AMS further refined the library as described in this Pilot based upon input received from those interested stakeholders on the draft library.

Similarities to the Swine Contract Library

In accordance with the statutory mandate, the Pilot is modeled on the Swine Contract Library. The Swine Contract Library features a report to the public on the contract terms available to sellers of swine. To achieve this, the statute and regulations require swine packers to report contract and production information for publication. Not all swine packers are required to report; swine packers must either slaughter 100,000 head per year or have the capacity to slaughter 100,000 head per year to be subject to reporting under the Swine Contract Library provisions. *See* 9 CFR 206.1. The regulations require swine packers to prepare a monthly report to submit to AMS. *See* 9 CFR 206.3. The public reports released on these contracts are anonymized to protect confidentiality under the standards of sec. 251 of the Agricultural Marketing Act of 1946. *See* 7 CFR 206.2(f); 7 U.S.C. 1636.

The Swine Contract Library publishes information on, among other things: the existing contract types for each geographic region; the contract types currently being made available; packers' reported estimates of the total number of committed swine; the types of conditions or circumstances as reported that could result in expansion in the numbers of swine to be delivered; and the packers' reported estimates of the maximum total number of swine that potentially could be delivered.

The Swine Contract Library has two public reports: A contract summary report, and a monthly report. Contract summary reports provide information on the various terms and provisions from the marketing contracts. This information includes: the determination of base price and how base price is set; the premium and discount adjustments to the base price as determined by both carcass and non-carcass traits; application of ledger where terms define the use of ledger or accrual accounts; and all other remaining terms and provisions from the contracts. Monthly reports provide packers' estimated swine purchases under marketing contracts for the next 6 and 12

months. To achieve a similar level of reporting in this Pilot, AMS must collect contract terms and volume information from cattle-slaughtering packers.

Accordingly, consistent with the Swine Contract Library (7 U.S.C. 198-198b; 7 U.S.C. 222; 9 CFR 206.1-206.3), AMS will require covered packers to report specific contractual information for the purchase of cattle. After the information is collected and reviewed, AMS will determine the most appropriate format for publication. Throughout, AMS will treat the reported information consistent with the confidentiality requirements of the Swine Contract Library's regulatory scheme and 7 U.S.C. 1636.

AMS Reporting

Through this Pilot, AMS ultimately intends to publish a variety of reports on a national level rather than a regional basis. The published library of information will likely focus on the base price for livestock, before application of any adjustments (i.e., premiums or discounts) in contracts; the contract terms that provide positive or negative adjustment to the base price before any premiums or discounts are applied; the contracts' schedule of discounts from the base price; the contracts' schedule of premiums to the base price; and the actual and expected volumes of trade under these contracts. AMS also intends to publish information on delivery and transportation terms and the contract terms related to financing, risk-sharing, and profit-sharing.

Consistent with the statutory mandate, this Pilot supports AMS's commitment to market transparency. AMS believes the Pilot will support competition by providing producers with the market information they need to make informed production, marketing, and business decisions. The Congressional reference to section 221 of the Packers and Stockyards Act (7 USC 198), together with the waiver of the notice-and-comment requirements of the Administrative Procedure Act and the requirements of the Paperwork Reduction Act, provide AMS the direction and authority to promulgate this rule.

Regulatory Analyses

Exemption from Notice and Comment Rulemaking

Sec. 779 of the Act provides that the promulgation of the regulations and administration of the Cattle Contracts Library pilot program shall be made without regard to the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 *et seq.*). Accordingly, AMS is publishing this final rule without having previously published a proposed rule on this action. While AMS did not provide for a formal comment period, it did conduct extensive outreach to cattle industry stakeholders, including hosting a listening session where AMS received comments and input. AMS also provided an opportunity for interested parties to submit written comments following the listening session, posted all input received on its website, and conducted additional outreach to stakeholders throughout the development of the Pilots. All public comments are available here: <https://www.ams.usda.gov/market-news/livestock-poultry-grain/cattle-contracts-library>. Written feedback AMS received is available here: <https://www.ams.usda.gov/market-news/livestock-poultry-grain/cattle-contracts-library/feedback>. AMS considered these comments and all feedback provided in the preparation of this rule, also taking into account the urgency of the expedited time frame provided by Congress to establish and operate the Pilot. Should such mandate sunset, AMS will suspend reporting under this rule or otherwise take actions consistent with relevant statutory mandates.

Executive Orders 12866 and 13563

USDA is issuing this rule in conformance with Executive Orders (E.O.) 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). E.O. 13563 emphasizes the importance of

quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

AMS designed the Pilot to maximize the net benefits of the rule and determined that this action, effectuating the authority and direction from Congress, will create benefits exceeding its costs, based on an assessment of the regulation's market impact as outlined in the Regulatory Flexibility Analysis.

Baseline

Based on figures from the USDA World Agricultural Supply and Demand Estimates,³ U.S. beef packers slaughtered 33.97 million cattle in 2021. Of that figure, 78.4 percent were steers and heifers, 19.9 percent were cows, and 1.7 percent were bulls and stags. Based on the National Monthly Slaughter Cattle - Committed and Delivered Cattle⁴ data between September 2021 and August 2022, 70.8 percent of cattle in the categories "steers and heifers" and "other fed cattle" were marketed under contract, either under the "formula" or "forward" categories. Of the cattle reported under contract on that report, 0.6 percent were in the other category. Based on these figures, approximately 22.58 million steers and heifers and an additional 135 thousand other fed cattle are marketed under contract annually.

The AMS National Weekly Cattle and Beef Summary⁵ reports an annual liveweight price for steers of \$139 per hundredweight for the year running between October 2021 and September 2022. Based on an actual average liveweight for cattle under slaughter of 1,370 pounds, the average price for steers and heifers sold under contract is approximately \$1,904 per head. The value of all steers and heifers sold under contract is then \$43.0 billion. Assuming that other fed cattle under contract are valued at

³ <https://www.ers.usda.gov/topics/farm-economy/commodity-outlook/wasde-projections-at-a-glance/>.

⁴ https://www.ams.usda.gov/mnreports/ams_2473.pdf.

⁵ <https://www.ams.usda.gov/mnreports/lswwebs.pdf>.

75 percent of the steer and heifer price per head, their value is \$193 million, and the value of all cattle under contract is \$43.2 billion.

The 2020 Annual Report of the AMS Packers and Stockyards Division⁶ states that 156 plants slaughtered cattle or calves in 2019. The same report notes that the four largest packers accounted for over 85 percent of the total steer and heifer slaughter in 2019, a figure that reflects the presence of very large firms, which can own several plants with much higher daily capacities than those of smaller operations. Because packers slaughtering less than 5 percent of the number of fed cattle slaughtered nationally annually are excluded from reporting under the rule, AMS estimates that four packers will be required to report under the rule.

Need for the Rule

Rulemaking is necessary to establish the Pilot as directed by Congress in the Act. The Pilot will allow AMS to report valuable market information on the structure and volume of cattle contracts. The Pilot will maintain information and publish a public library or catalog of information with contract types and terms offered by packers to cattle producers for the purchase of fed cattle. The information in the library will include information on any schedules of premiums or discounts, delivery and transportation terms and payments, financing, risk-sharing or profit sharing, and other financial arrangements associated with such contracts. Pursuant to the Pilot, AMS will also collect information on the number of head of cattle procured through the use of contracts.

Currently, AMS reports market information on how cattle prices vary based on quality grade of cattle at the lot level. Reports issued pursuant to the Pilot will provide a different cross-section of information, including premiums and discounts for quality grade, yield grade, weight, and other special programs, such as breed certification programs or special feeding programs. Reports based on the Pilot will also provide

⁶ <https://www.ams.usda.gov/sites/default/files/media/PackersandStockyardsAnnualReport2020.pdf>.

information on the basis prices used in contracts and adjustments made to the basis based on factors such as dressing percentage, cattle origins, and cattle breed or type.

Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601-612) (RFA), AMS has considered the economic impact of this action on large and small entities. Accordingly, AMS has prepared this Regulatory Flexibility Analysis. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened.

For the duration of the Pilot, this rule requires regulated packers to submit contractual information for the purchase of cattle to AMS, including any supplemental information on cattle requirements, schedules of premiums or discounts, delivery and transportation terms and payments, schedules or appendices of financing, risk-sharing, profit sharing, or other financial arrangements associated with such contracts, whenever new contracts are offered or existing contracts are updated. This rule also requires packers to report monthly both the number of cattle purchased under active contracts in the prior month and an estimate of the maximum total number of cattle to be purchased under active contracts for delivery to each plant for slaughter within the current calendar month.

Packers subject to this Pilot are classified under code 311611 of the North American Industry Classification System (under the title “Animal (except Poultry) Slaughtering”)⁷. As per 13 CFR 121.601, the Small Business Administration (SBA) has established that packers are small businesses if they employ fewer than 1,000 employees across all their operations. AMS excludes packers slaughtering less than 5 percent of the number of fed cattle slaughtered nationally annually from the rule’s requirements to report cattle contracts, a definition that precludes all small packers. Because of this

⁷ <https://www.census.gov/naics/?input=311611&year=2022&details=311611>.

exclusion, AMS determines that establishment of this program will not create economic costs for small entities and does not impose a burden on them.

Benefits and Costs of the Rule

To evaluate the total costs of the rule, AMS first calculates the costs on a per packer basis as follows: AMS assumes that four packers will be required to report contractual information under the Rule. Each packer will be required to electronically enter specific information on contract terms, an activity that AMS assumes will not need to occur more frequently than on a weekly basis. AMS assumes packers subject to this Pilot maintain, on average, 60 active contracts each. Allowing for 15 minutes for each contract, each packer will require about 15 hours of manager worktime to report contract information. AMS assumes that reporting contract information occurs 52 times per year per packer so that reporting requires 780 hours of managerial time per packer annually. Also, AMS estimates that each packer subject to the Pilot requires 2 hours of managerial worktime to report the prior month's total cattle purchased under each active contract and to estimate and report the maximum number of cattle to be purchased under each active contract within the current calendar month. Occurring 12 times a year, AMS estimates monthly purchase volume reporting requires 24 hours of managerial worktime per plant annually. Furthermore, AMS estimates that managers reporting contract data require 4 hours to learn the rules reporting requirements and process.

In total, AMS expects each packer subject to the Pilot to require 808 hours of managerial labor time annually to comply with the rule's reporting requirements. AMS also estimates that 4 hours will be required annually, on average, for each packer's legal staff to review the rule and understand the conditions of compliance. Based on Bureau of Labor Statistics wage statistics⁸, each packer will incur \$30,470 (808 hours * \$37.71 per

⁸The wage rate for a "first-line supervisor" under code 45-1011 is \$26.18 and for a worker in "legal occupations" under code 23-0000 is \$54.38 (<https://www.bls.gov/oes/current/oes451011.htm>).

hour) of managerial labor costs and \$218 (4 hours * \$54.38 per hour) of legal specialist labor costs annually for a total of \$30,688 in costs per packer each year. In total across all packers subject to this Pilot, the rule will create costs to regulated entities of \$122,752 annually.

AMS does not quantify the benefits to the Pilot rule but considers the benefits to be large and multi-faceted. First, the rule will improve market efficiency by improving price discovery, price transparency, and price transmission. While current AMS reports provide information on price premiums received for cattle based on grading percentage at the lot level, reports published with information obtained through the Pilot are expected to provide more detailed and specific information on how contract payments vary directly with individual carcass grades, yield grades, and cattle weights. This more precise information will improve price transmission and transparency regarding the demand for and cost of cattle of different qualities. Second, reports published with information obtained through the Pilot will likely facilitate the differentiation of cattle along quality dimensions and the development of new product markets by providing market information on premiums paid for cattle carcass characteristics not already documented in existing AMS reports. These can include grass-fed, organic, quality certification, breed, or hormone free programs. Third, reports published with information obtained through the Pilot are likely to enhance competition by reducing market inefficiencies associated with incomplete or asymmetric information. Currently, incomplete information on the availability of premiums associated with cattle characteristics is likely to create uncertainty regarding the return on investment in cattle quality improvement. By documenting the availability of such premiums for specific quality traits, producers are more likely to be reassured of having a market for final products and be more likely to undertake appropriate investments.

Similarly, incomplete or asymmetric information may also mask the true value of certain cattle. Making such information more transparent may improve efficiencies in the price discovery and trading markets and provide enhanced signals to producers with respect to output, owing to better insights regarding market demand and supply for cattle. Volume information and volume-related context may provide similar benefits.

While AMS does not explicitly quantify the benefits to the rule, AMS believes these benefits significantly exceed the rule's calculated costs. Additionally, the Pilot is currently funded for approximately one calendar year. Accordingly, because the costs to the rule do not exceed minimum threshold levels for a rule to be considered significant, the rule does not meet the definition of a significant regulatory action under Executive Order 12866.

Paperwork Reduction Act

Sec. 779 of the Act provides that the promulgation of the regulations and administration of the Cattle Contracts Library pilot program shall be made without regard to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Accordingly, the Office of Management and Budget has not reviewed or approved the information collection requirements of the Pilot.

E-Government Act

USDA is committed to complying with the E-Government Act (44 U.S.C. 3601, *et seq.*) by promoting the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 13175

This rule has been reviewed under E.O. 13175 – Consultation and Coordination with Indian Tribal Governments. E.O. 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on (1) policies that have

tribal implications, including regulations, legislative comments, or proposed legislation; and (2) other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

AMS has assessed the impact of this rule on Indian tribes and determined that it would not have tribal implications that require consultation under E.O. 13175. AMS hosts a quarterly teleconference with tribal leaders, where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the Cattle Contract Library pilot program will be shared during an upcoming quarterly call, and tribal leaders will be informed about the Pilot. AMS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided as needed with regards to the Pilot.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988 – Civil Justice Reform. This rule does not have retroactive effect. There are no administrative procedures that must be exhausted prior to judicial challenges to the provisions of this rule. This rule does not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

Civil Rights Review

AMS has considered the potential civil rights implications of this rule on minorities, women, and persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information.

List of Subjects in 7 CFR Part 180

Cattle, Contracts, Library, Pilot, Reporting requirements.

For the reasons set forth in the preamble, AMS amends 7 CFR subtitle B, chapter 1, subchapter G by adding part 180 to read as follows:

PART 180 – CATTLE CONTRACTS LIBRARY PILOT PROGRAM

Sec.

180.1 General administration.

180.2 Definitions.

180.3 Cattle Contracts Library.

180.4 Monthly cattle volume reporting.

Authority: 7 U.S.C. 1621-1627

§ 180.1 General administration.

(a) *Confidentiality.* The Secretary shall make information obtained under this part available to the public only in a manner that ensures that confidentiality is preserved regarding –

(1) The identity of persons, including parties to a contract; and

(2) Proprietary business information.

(b) *Disclosure by Federal Government employees—*(1) *In general.* Subject to paragraph (b)(2) of this section, no officer, employee, or agent of the United States shall, without the consent of the packer or other person concerned, divulge or make known in any manner, any facts or information regarding the business of the packer or other person that was acquired through reporting required under this part.

(2) *Exceptions.* Information obtained by the Secretary under this part may be disclosed—

(i) To agents or employees of the Department of Agriculture in the course of their official duties under this part;

(ii) As directed by the Secretary or the Attorney General, for enforcement purposes; or

(iii) By a court of competent jurisdiction.

(3) *Disclosure under Freedom of Information Act.* Notwithstanding any other provision of law, no facts or information obtained under this part shall be disclosed in accordance with section 552 of title 5, United States Code.

(c) *Regional reporting.* The Secretary shall make information obtained under this part available to the public only in a manner that ensures that the information is published on a national or regional basis as the Secretary determines to be appropriate.

(d) *Adjustments.* Prior to the publication of any contract information obtained under this part, the Secretary may make reasonable adjustments to address aberrations or other unusual or unique occurrences that the Secretary determines would distort the published information to the detriment of producers, packers, or other market participants.

(e) *Reporting methods.* Information required to be reported under this part shall be reported by electronic means in the manner prescribed by the Secretary. Information may be reported in an alternative manner in emergencies or in cases when an alternative method is agreed to by both the entity required to report and the Secretary.

(f) *Verification.* The Secretary may take such actions as are necessary to verify the accuracy of the information submitted or reported under this part.

(g) *Noncompliance.* The Secretary may refer instances of non-compliance with this part of the appropriate office of the Department for further investigation.

§ 180.2 Definitions.

The following definitions apply to this part.

Active contract. The term “active contract” means a contract that is currently available between a packer and producer under which fed cattle may be purchased.

Base price. The term “base price” means the price paid for livestock, before application of any adjustments, premiums or discounts, expressed in dollars per hundred pounds of hot carcass weight or live weight.

Base price adjustment. The term “base price adjustment” means the positive or negative adjustment to the base price before any premiums or discounts are applied.

Business day. The term “business day” means a day on which the packer conducts normal business regarding livestock committed to the packer, or livestock purchased or sold by the packer, and the Department of Agriculture is open to conduct business, typically Monday through Friday and excluding Federal holidays.

Calendar month. The term “calendar month” means a timeframe that begins on the first day of the month at midnight and ends on the last day of the month at 11:59 p.m. in the central time zone.

Contract. The term “contract” means a written or oral agreement concerning the specific terms and conditions under which an unknown volume of fed cattle may be purchased by a packer during a specified time frame, or under which a known volume of cattle is purchased by a packer for a given plant during a specified time frame.

Contract method. The term “contract method” means the way in which the contract was established, either written or oral.

Current month. The term “current month” means the present calendar month.

Discount. The term “discount” means the adjustment, expressed either in dollars per one hundred pound or per head, subtracted from the base price.

Fed cattle. The term “fed cattle” means a steer or heifer that has been finished on a ration of roughage and feed concentrates, such as grains, protein meal, grass (forage), and other nutrient-rich feeds, prior to slaughter.

Inactive contract. The term “inactive contract” means a fed cattle contract that is no longer available between a packer and producer for purchase under, or one that is not currently in use.

Packer. The term “packer” means a packer that has slaughtered during the immediately preceding 5 calendar years an average of not less than 5 percent of the

number of fed cattle slaughtered nationally during the immediately preceding 5 calendar years.

Person. The term “person” means any individual, group of individuals, partnership, corporation, association, or other entity.

Premium. The term “premium” means the adjustment, expressed either in dollars per one hundred pound or per head, added to the base price.

Prior month. The term “prior month” means the calendar month immediately preceding the current month.

Producer. The term “producer” means any person engaged in the business of selling livestock to a packer for slaughter (including the sale of livestock from a packer to another packer).

Secretary. The term “Secretary” means the Secretary of Agriculture of the United States or any other officer or employee of the Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Secretary's stead.

Selling basis. The term “selling basis” refers to cattle that are sold on a live, dressed, live converted to dressed, or dressed converted to live weight basis under a contract.

Unique identifier. The term “unique identifier” means a unique code chosen by the packer for the contract, specific to the contract, and utilized and trackable through the life of the contract.

§ 180.3 Cattle Contracts Library.

(a) *Initial contract information submission.* On [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], each packer shall submit to the Secretary information for each active contract with a unique identifier. The information shall be submitted in accordance with § 180.1(e). The contract information required to be reported includes:

- (1) The contract method;
- (2) The contract start and end dates; and
- (3) All terms associated with:
 - (i) Each base price source and adjustment;
 - (ii) Selling basis;
 - (iii) Premiums and discounts;
 - (iv) Specifications relating to cattle attributes;
 - (v) Delivery and transportation terms and payments;
 - (vi) Financing, risk-sharing, profit-sharing or other financial arrangements; and,
 - (vii) Volume provisions.

(b) *Reporting deadlines.* Within 1 business day of making a new contract available, making a change to an existing contract, or making a contract no longer available, each packer must submit the following:

(1) Packers must submit all contract terms in accordance § 108.4(a) for each new active contract for each producer or producers at each plant that it operates or at which it has cattle slaughtered;

(2) Packers must submit any changes to the terms of a previously submitted active contract and associated schedules or appendices, including the unique identifier for the previously submitted contract it supersedes; and

(3) Packers must submit information to remove inactive contracts from the library, including the unique identifier for the now inactive contract.

§ 180.4 Monthly cattle volume reporting.

(a) *Initial estimated volume submission.* On [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], each packer shall submit to the Secretary an initial estimate of the total volume of cattle to be contracted for in the current calendar month in accordance with §180.1(e).

(b) *Reporting deadlines.* By the close of business on the second Friday of each month, each packer must submit the following information in accordance with § 180.1(e). If the second Friday of a month falls on a non-business day, the deadline is due no later than the close of the next business day following the second Friday of the month:

(1) Number of cattle purchased by each base price source under each active contract in the prior month reported by unique identifier and

(2) Estimate of the total number of cattle to be purchased under active contracts for delivery to each plant for slaughter within the current calendar month.

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